

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

PAINTERS & ALLIED TRADES
DISTRICT COUNCIL NO. 35
Plaintiff,

v.

PAYNE CONTRACTING CO.
Defendant.

05.10053 NG

MAGISTRATE JUDGE Dein

C.A. No.

RECEIPT # 61327AMOUNT \$ 190SUMMONS ISSUED 4/5

LOCAL RULE 4.1

WAIVER FORM

MCF ISSUED

BY DPTY. CLK. 10/11/05COMPLAINT 1/10/05

1. This is an action to enforce a labor arbitration award pursuant to §301 of the Labor Management Relations Act (the "Act"), 29 U.S.C. §185. This Court has jurisdiction pursuant to 28 U.S.C. §1331 and §1337.

2. Plaintiff, Painters & Allied Trades District Council No. 35, is a labor organization within the meaning of 29 U.S.C. §152(5) and is the duly authorized collective bargaining representative of painters and their allied trades employed in Massachusetts, Maine, New Hampshire and Vermont. Plaintiff maintains its principal office in Roslindale, Massachusetts.

3. Defendant, Payne Contracting Co., is an employer within the meaning of 29 U.S.C. §152(2) and §185, conducts business in this judicial district and has its principal place of business in Dorchester, Massachusetts.

4. Plaintiff and Defendant are parties to a collective bargaining agreement that is a contract within the meaning of 29 U.S.C. §185(a) and that, among other things, provides for arbitration of disputes arising under the agreement.

5. Plaintiff invoked the grievance and arbitration provision of the applicable collective bargaining agreement and submitted to arbitration several disputes with Defendant that had arisen under the collective bargaining agreement.

6. The parties' collective bargaining agreement provides that the Joint Trade Board is authorized to hear and adjudicate "all questions of interpretation of this agreement and all grievances and complaints" and that the Joint Trade Board's decisions are binding as to the parties.

7. Following hearings in Boston, Massachusetts on July 12, 2004 and August 31, 2004 on the Plaintiff's grievances, at which the Defendant appeared after being given proper notice, the Joint Trade Board duly issued Awards on July 15, 2004 and September 2, 2004 sustaining Plaintiff's grievances. In the first case, the Joint Trade Board ordered the Defendant to pay its Union Steward sixteen (16) hours of pay at time and one-half and remit sixteen (16) hours of fringe benefit contributions on his behalf to the Plaintiff's affiliated funds. In the second case, the Joint Trade Board awarded Plaintiff and its affiliated funds the total amount of \$7,491.92 representing delinquent contributions, liquidated damages and costs and fees. The Joint Trade Board ordered the Defendant to provide payment of the amounts within ten (10) days of receipt of the respective Awards. (Awards attached hereto as Exhibits "A" and "B"). Defendant received the Joint Trade Board Awards on July 16, 2004 and September 3, 2004, respectively.

8. To date and without any lawful justification, Defendant has refused to comply with the Joint Trade Board's Awards.

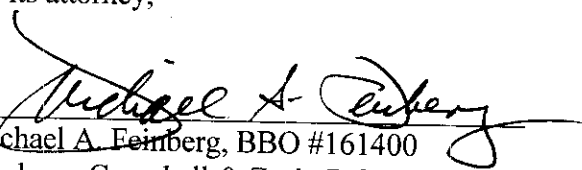
9. The Massachusetts Arbitration Act requires that any action to vacate an arbitration award be filed within thirty (30) days of the award. M.G.L. c. 150 § 11.

10. Defendant failed to file an action to vacate the arbitration award within thirty (30) days of its receipt.

WHEREFORE, Plaintiff respectfully requests that judgment be entered against Defendant:

- A. ordering the Defendant to pay its Union Steward sixteen (16) hours of pay at time and one-half and pay sixteen (16) hours of fringe benefit contributions on his behalf with pre-judgment interest from ten days after the receipt of the Award as provided for in the collective bargaining agreement;
- B. ordering Defendant to pay the Joint Trade Board the amount of \$7,491.92 with pre-judgment interest from ten days after the receipt of the Award as provided for in the collective bargaining agreement;
- C. ordering the Defendant to pay Plaintiff's costs and attorney's fees for bringing this action;
- D. awarding such other and further relief as may be just and proper; including, but not limited to, declaring that the Defendant is time-barred from asserting any affirmative defenses because the statutory period of thirty (30) days has elapsed.

Plaintiff,
Painters & Allied Trades District Council No. 35,
By its attorney,


Michael A. Feinberg, BBO #161400
Feinberg, Campbell & Zack, P.C.
177 Milk Street
Boston, MA 02109
(617) 338-1976

DATED: January 6, 2005

Chairman - Secretary
Thomas J. Gunning
PFEANE, Inc.
GEANE, Inc.

NEW ENGLAND
PAINTING, FINISHING & GLAZING INDUSTRIES
DC 35 Joint Trade Board

Painters and Allied Trades District Council No. 35
Labor & Management Working Together in MA, ME, NH, VT

Treasurer
Ralph Harriman
District Council No. 35

CERTIFIED MAIL

DC-21

July 15, 2004

Mr. Emmanuel Payne
Payne Contracting Co.
34 Mallon Road
Dorchester, MA 02121

Dear Mr. Payne:

This matter came before the New England Painting, Finishing & Glazing Industry DC 35 Joint Trade Board at a hearing on July 12, 2004 at the offices of Painters District Council No. 35, 25 Colgate Road, Roslindale, MA.

Bill Doherty, DC 35 Bus. Representative presented the evidence supporting the charge.

Mr. Doherty testified that the charges against the Company involve violations of the Working Agreement, specifically Article XVII, B Subcontracting; Article XVI, A, B, C Shop Steward Protected and Article IV, A, B, C Union Security Clause.

Mr. Doherty described, in detail, how on Saturday, June 26, 2004, he discovered Emmanuel Payne working on the Blue Hills Estate project in Roxbury, MA. Painters DC 35 was not notified of the overtime, nor was the shop steward, Edgar Della Cruz. On Sunday, June 27, 2004, Emmanuel Payne was again working on the project along with two (2) painters without notifying Painters DC 35 or the shop steward. On Wednesday, June 30, 2004, one (1) painter was working on the second shift without notifying the shop Steward.

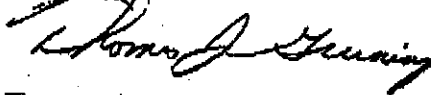
Based upon the evidence, the Board unanimously voted that Payne Contracting Company violated the Working Agreement, specifically Article IX, Funds General Requirements, Article X, Dues Check-Off, Article XVII, B Subcontracting; Article XVI, A, B, C Shop Steward Protected; and Article IV, A, B, C Union Security Clause. The Board was also made aware of (3) pending Overtime Registration violations.

Based upon the evidence, the Board unanimously agreed that Payne Contracting Company pay the Steward, Edgar Della Cruz a check for the amount of sixteen hours pay at time and one-half, less statutory deductions and a check payable to DC 35 Funds Office for the amount of sixteen hours for benefits on behalf of Mr. Della Cruz. In order to monitor compliance with this Award both checks should be mailed to the Joint Trade Board. Also, an administrative fee of \$200 made payable to the New England Painting, Finishing & Glazing Industry DC 35 Joint Trade Board should be mailed to: New England Painting, Finishing & Glazing Industry DC 35 Joint Trade Board, 1400 Hancock St., 7th floor, Quincy, MA 02169, along with the two checks stated above is due within ten (10) days following the receipt of this Award.

In the event that the company fails to comply with any of the terms of this Award and the union prevails at any proceeding to obtain judicial enforcement of the Award, the union's reasonable attorney's fees incurred in such proceedings, as determined by the court on an application for attorney's fees, shall be deemed and, hereby is, a part of this Award. In addition to attorney's fees the union shall be entitled to pre-judgment interest on any amount found to be owed by the company from a date ten (10) days after the company's receipt of the Award, which interest shall be calculated at 1-1/2 % above prime up to \$500.00 and 2% above prime over \$500.00 or any other higher amount allowed by law or regulation. The Board voted unanimously for the findings, conclusions and awards set forth herein.

For your information, a copy of the Appeal Procedure is attached hereto.

Cordially,



Thomas J. Gunning
Chairman/Secretary

Enclosure

cc: Ralph Harriman, Business Manager
Sharon Saganey, Funds Administrator
Painters & Allied Trades District Council No. 35
Michael A. Feinberg, Esq., Feinberg, Campbell & Zack, P.C.
Wm. Doherty, Bus. Rep., DC 35

PAINTING, FINISHING & GLAZING INDUSTRIES
DC 35 Joint Trade Board

Painters and Allied Trades District Council No. 35
Labor & Management Working Together in MA, ME, NH, VT



CERTIFIED MAIL

FAC-42

September 2, 2004

Mr. Emmanuel Payne
Payne Contracting Co.
34 Mallon Road
Dorchester, MA 02121

Dear Mr. Payne:

This matter came before the New England Painting, Finishing & Glazing Industry DC 35 Joint Trade Board at a hearing on August 31, 2004, at the offices of Painters District Council No. 35, 25 Colgate Road, Roslindale, MA. You appeared on behalf of the Company in your capacity as its owner. Painters & Allied Trades District Council No. 35 submitted the charges to the Board.

Heather Palmacci, DC 35 Funds office, presented the evidence supporting the charge.

Ms. Palmacci testified that the charges against the company involved violations of the Working Agreement, specifically Article IX, Section 3, Failure to Pay.

Ms. Palmacci testified that the company is delinquent to the funds for the period of May 12, 2004 through June 30, 2004, in the amount of \$5,826.60. Ms. Palmacci further testified that the company is three weeks' delinquent in turning in work reports.

Based upon the evidence, the Board unanimously voted that Payne Contracting Co. was delinquent in the amount of \$5,826.60.

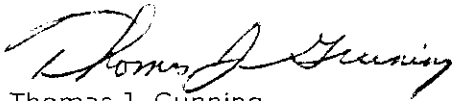
In addition, the Board voted that Payne Contracting Co. be required to pay 20% liquidated damages and an administrative fee of \$200 within ten (10) days following the receipt of this Award. Therefore, a check in the amount of \$7,191.92, made payable to the New England Painting, Finishing & Glazing Industry DC 35 Joint Trade Board and should be mailed to New England Painting, Finishing & Glazing Industry DC 35 Joint Trade Board, 1400 Hancock St., 7th floor, Quincy, MA 02169.

In the event that the company fails to comply with any of the terms of this Award and the union prevails at any proceeding to obtain judicial enforcement of the Award, the union's reasonable attorney's fees incurred in such proceedings, as determined by the court on an application for attorney's fees, shall be deemed and, hereby is, a part of this Award. In addition to attorney's fees the union shall be entitled to pre-judgment interest on any amount found to be owed by the company from a date ten (10) days after the company's receipt of the Award, which interest shall be calculated at 1-1/2 % above prime up to \$500.00 and 2% above prime over \$500.00 or any other higher amount allowed by law or regulation.

The Board voted unanimously for the findings, conclusions and awards set forth herein.

For your information, a copy of the Appeal Procedure is attached hereto.

Cordially,

A handwritten signature in black ink, appearing to read "Thomas J. Gunning". The signature is fluid and cursive, with the first name "Thomas" being more prominent.

Thomas J. Gunning
Chairman/Secretary

Enclosure

cc: Ralph Harriman, Business Manager
Sharon Saganey, Funds Administrator
Painters & Allied Trades District Council No. 35
Michael A. Feinberg, Esq., Feinberg, Campbell & Zack, P.C.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY) Painters & Allied Trades District Council
No. 35 v. Payne Contracting Co.

2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LISTED ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1)).

- I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- X II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950.
- III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- V. 150, 152, 153.

*Also complete AO 120 or AO 121 for patent, trademark or copyright cases

3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(G)). IF MORE THAN ONE PRIOR RELATED CASE HAS BEEN FILED IN THIS DISTRICT PLEASE INDICATE THE TITLE AND NUMBER OF THE FIRST FILED CASE IN THIS COURT.

4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT?
YES ☐ NO ☒

5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST? (SEE 28 USC §2403)

YES ☐ NO ☒

IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S. A PARTY?

YES ☐ NO ☐

6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC §2284?

YES ☐ NO ☒

7. DO ALL OF THE PARTIES IN THIS ACTION, EXCLUDING GOVERNMENTAL AGENCIES OF THE UNITED STATES AND THE COMMONWEALTH OF MASSACHUSETTS ("GOVERNMENTAL AGENCIES"), RESIDING IN MASSACHUSETTS RESIDE IN THE SAME DIVISION? - (SEE LOCAL RULE 40.1(D)).

YES ☒ NO ☐

A. IF YES, IN WHICH DIVISION DO ALL OF THE NON-GOVERNMENTAL PARTIES RESIDE?

EASTERN DIVISION ☒ CENTRAL DIVISION ☐ WESTERN DIVISION ☐

B. IF NO, IN WHICH DIVISION DO THE MAJORITY OF THE PLAINTIFFS OR THE ONLY PARTIES, EXCLUDING GOVERNMENTAL AGENCIES, RESIDING IN MASSACHUSETTS RESIDE?

EASTERN DIVISION ☐ CENTRAL DIVISION ☐ WESTERN DIVISION ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Michael A. Feinberg, Esq.

ADDRESS 177 Milk Street, Boston, MA 02109

TELEPHONE NO. 617-338-1976

JS 44 (Rev. 3/99)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Painters & Allied Trades District
Council No. 35

(b) County of Residence of First Listed Plaintiff Suffolk
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

Payne Contracting Co.

County of Residence of First Listed Suffolk
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Feinberg, Campbell & Zack, P.C.
177 Milk Street
Boston, MA 02109 617-338-1976

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☐ 1 ☐ 1 DEF Incorporated or Principal Place of Business in This State ☐ 4 ☐ 4 DEF
- Citizen of Another State ☐ 2 ☐ 2 DEF Incorporated and Principal Place of Business in Another State ☐ 5 ☐ 5 DEF
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 DEF Foreign Nation ☐ 6 ☐ 6 DEF

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 896 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input checked="" type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (13950) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIW C/DIW W (405(g)) <input type="checkbox"/> 864 SSD Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609

V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

☒ 1 Original Proceeding

☐ 2 Removed from State Court

☐ 3 Remanded from Appellate Court

☐ 4 Reinstated or Reopened

Transferred from another district (specify)

☐ 6 Multidistrict Litigation

☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

(Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

enforcement of arbitration award pursuant to §301 of the Labor Management Relations Act, 29 U.S.C. §185

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ 7,491.92

CHECK YES only if demanded in complaint:

JURY DEMAND:

☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDG
E

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE